IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.781 OF 1997

Shri Paresh M.Jogi ...Petitioner

Versus

Messrs Janus Remedies Pvt.Ltd. ...Respondents

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Ms.D.P.Bosamia for Petitioner.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 9, 2005.

P.C.

1. Heard Counsel for the Petitioner. Perused the pleadings. None appears for the Respondents though served.

2. According to the Petitioner, the Petitioner sold, delivered and supplied goods to Respondent Company from time to time between November 1995 to March 1996 as per their requisition. The total goods supplied was to the

tune of over Rs.3,55,485/- (Rupees Three Lakhs Fifty-five Four Hundred Eighty-five). The goods supplied were duly accepted by the Respondent Company without any demur. At no point of time, any objection was raised regarding short supply of goods or quality of goods.

3. As the outstanding payment was not received, Petitioner gave statutory notice on 4th August 1997, calling upon the Company to pay Rs.2,94,142.15 (Rupees Two Lakhs Ninety-four Thousand One Hundred Forty-two & Paise Fifteen Only) together with interest at the rate of 24% per annum. As the amount was not received, Petitioner was driven to file the present Petition under Section 433 and 434 of the Companies Act on 11th September 1997.

4. Respondent Company had filed reply to oppose admission of the Petition, sworn by Mr.Rashmi K.Bhansali, Director of the Company dated 15th December 1997. On fair reading of the said reply, it is obvious that the liability to pay amount under four bills in the sum of

Rs.2,94,142.50 (Rupees Two Lakhs Ninety-four Thousand One Hundred Forty-two & Paise Fifty Only) is acknowledged by Respondent Company. The Respondent Company, in fact assured by this affidavit that it was releasing the payment to the Petitioner very shortly. Conditional order was passed by this Court requiring the Respondent Company to comply with the same. The conditional order was, however, not complied by the Respondent, which resulted in admission of the present Petition.

5. Although the Respondent Company has assured to make the outstanding payment, as mentioned in the reply dated 15th December 1997, no amount has been paid by the Respondent Company so far. In this backdrop, present Petition is pursued by the Petitioner before this Court.

6. After having perused the documents on record, I have no hesitation in taking the view that the claim of the Petitioner is substantiated from the record. As mentioned earlier, the Respondent Company has acknowledged its liability

to pay amount under the four bills. In fact, the Respondent Company assured to pay the said amount to the Petitioner very shortly, as stated in the affidavit filed in December 1997 before this Court. However, no payment has been made to the Petitioner since then. In my opinion, the claim of the Petitioner is just, and as mentioned earlier, has been acknowledged by the Respondent Company. Inspite of assurance, the Respondent Company has not offered the amount even during the pendency of this petition for such a long period.

7. In that view of the matter, I have no hesitation in concluding that the Respondent Company is unable to pay its debt. On this finding, the Petition ought to succeed in terms of prayer clauses (a) and (b) of the Petition. Ordered accordingly.

A.M.KHANWILKAR, J.